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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/056,501	05/03/93	HARVEY	J 56347
		22M2/0237	EXAMINER CAIN, D.
			ART UNIT 2202
			PAPER NUMBER DATE MAILED: 09/27/93

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on \_\_\_\_\_  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice re Patent Drawing, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, Form PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  \_\_\_\_\_

Part II SUMMARY OF ACTION

1.  Claims 1 - 3 are pending in the application.
2.  Claims \_\_\_\_\_ have been cancelled.
3.  Claims \_\_\_\_\_ are allowed.
4.  Claims 1 - 3 are rejected.
5.  Claims \_\_\_\_\_ are objected to.
6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.
7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8.  Formal drawings are required in response to this Office action.
9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable.  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been  approved by the examiner.  disapproved by the examiner (see explanation).
11.  The proposed drawing correction, filed on \_\_\_\_\_ has been  approved.  disapproved (see explanation).
12.  Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1835 C.D. 11; 453 O.G. 213.
14.  Other

HOWREY & SIMON

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EXAMINER'S ACTION

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

2. Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the prior invention as set forth in claims 1-71 of U.S. Patent No. 5,233,654. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the present claims are included in the patented claims.

3. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of monopoly by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

4. Any questions concerning this communication should be directed to Primary Examiner David Cain at telephone number (703) 308-0463. If prosecution of this case might be expedited by a telephone or personal interview, you are encouraged to call so a meeting can be arranged. Any comments with respect to the quality or content of this action are appreciated as well.

9/17/93

*David Cain*  
David Cain  
Primary Examiner  
Group 220